only detain a person in Sarawak but not outside Sarawak. As the PPSO has not been extended outside Sarawak any Detention Order made thereunder could have no legal effect outside Sarawak. Therefore, neither the Minister nor the Federal Secretary could serve such a Detention Order outside Sarawak. As such Detention Order is ineffective the service would be bad and the detention would be unlawful not being in compliance with the law.

I would like to make one observation. In effect, two sets of laws relating to Internal Security apply to Sarawak. This is also the position in Sabah. Where one set of law is sufficient to deal with internal security in the country there is no necessity to have another set of similar law in any particular State. Having two sets of similar law is unsatisfactory as overlapping is inevitable. It tends also to cause confusion. Such kind of arrangement defeats the very purpose of achieving uniformity of law throughout Malaysia. Since the Internal Security Act, 1960 which is more comprehensive can be used, the PPSO and subsidiary legislation made thereunder should be removed.

For reasons given, I would dismiss the appeal. As to costs the proper order in this case is that each party would have to bear its own costs.

Wan Suleiman F.J.: I must say that I am in complete agreement with the conclusions arrived at by my learned brethren.

However, there are two points about which I feel I should add my own comments.

Whilst it is not disputed that the Minister or his delegate, the Federal Secretary, can detain a person who is in Sarawak, can either of them detain someone who is outside Sarawak? Whilst the PPSO may be federal law, it can only have effect within the boundaries of Sarawak unless the Yang Dipertuan Agung extends it under section 74(2) of the Malaysia Act either throughout Malaysia or to some specified State or States within Malaysia. The learned Lord President has, with his usual facility for simplifying complicated questions of law, made the answers so obvious that I will also say neither the Minister nor the Federal Secretary can under the PPSR detain a person whilst such person is outside Sarawak.

I would also with respect concur with their answer to the more subtle point raised in the course of the appeal. Though the Minister or his delegate does not have the power to detain a person under the PPSR whilst such person remains outside Sarawak, they can validly make a Detention Order in respect of such person whilst that person is outside Sarawak, and such order will take effect when the person concerned *enters* Sarawak.

I would also like to lend the weight of my own considered views to the observation made by the Chief Justice, Borneo in the penultimate paragraph of his judgment.

Some 13 years after Malaysia Day, one finds two component States, *i.e.* Sabah and Sarawak having each two weapons with which to deal with internal security and subversion. There can be no doubt that the Internal Security Act, 1960 is the more comprehensive and indeed the more effective legislation for such purpose. If there be any doubt on this score the result of the present appeal should dispel such doubt. It may well be that during the first few years after Malaysia Day those in charge of internal security in Sabah and Sarawak may have found the more familiar State laws which have after Malaysia Day become federal laws more convenient to administer. Surely, however, there has been adequate time for them to become familiar with the Internal Security Act, 1960. I would therefore echo the sentiments of the Chief Justice, Borneo and say that the continuing process of keeping the statute books in order by weeding out superfluous legislation could usefully include the early removal of these redundant laws which have outlived their usefulness.

Appeal dismissed.

Solicitors: *Reddi & Co.*

THERESA CHONG v. KIN KHOON & CO.

[F.C. (Gill C.J. (Malaya), Ali and Ong Hock Sim F.JJ.) August 28, 1976]

[Ipoh — Federal Court Civil Appeal No. 26 of 1976]

Contract — Agreement entered into with person as remisier — Person not registered with the Stock Exchange as remisier — Whether contract contrary to public policy — Contracts Act, 1950, s. 24

Share Brokers — Remisier — Not registered — Agreement — Effect of.

This was an appeal from the decision of Wan Hamzah J. who held that the appellant was liable to pay the respondents a sum of $35,330.25 being the amount due under a series of share dealings between the plaintiffs and the defendants. The learned trial judge held that the appellant acted as remisier for the respondents, although she was not registered with the Stock Exchange as such. He nevertheless held that although there was a violation of the rules of the Stock Exchange the contract was valid and not illegal as being contrary to public policy. On appeal it was argued that the learned trial judge should have held that the contract was illegal and void and/or alternatively that the court would not assist a plaintiff in enforcing a contract which contravened the rules of the Stock Exchange.

Held, dismissing the appeal: the contract did not fit into any of the traditional pigeon holes of contracts contrary to public policy and therefore the learned trial judge was correct in holding that the contract was not illegal.

Cases referred to:-

(1) *Scott* v. *Brown Doering, McNab & Co.* [1892] 2 Q.B. 724.

(2) *Montfiore* v. *Menday Motor Components Co. Ltd.* [1918] 2 K.B. 241.

(3) *Monkland* v. *Jack Barclay Ltd.* [1951] 2 K.B. 252, 265.

(4) *Fender* v. *St. John Milmay* [1938] A.C. 1.

(5) *Nagle* v. *Feilden* [1966] 2 Q.B. 633.

(6) *Esso Petroleum Co. Ltd.* v. *Harper's Garage (Stourport) Ltd.* [1967] 2 W.L.R. 871.

FEDERAL COURT.

Lim Ewe Hock for the appellant.

N.T. Rajah for the respondents.

In the court below the following judgment was delivered on December 31, 1975:

Wan Hamzah J.: The main issue in this case can be summarily stated as follows. There were ten statements of accounts (particulars of which are given in paragraph 3 of the Statement of Claim) in respect of transactions by which the plaintiffs, who were stockbrokers, sold shares through the defendant. The plaintiffs allege that the defendant was a remisier and had dealt with these share transactions in the capacity of a remisier and as such was responsible for the payment of the costs of the shares transacted, amounting to $38,015.66 in all. The defendant admits that these transactions had been effected through her but denies that she was a remisier, and she alleges that she sold the shares as agent for the plaintiffs and was not therefore responsible for payments except in respect of statement of account No. SA A0147 dated April 22, 1970 relating to certain transactions by which, she admits, she bought the shares for herself for $8,175. There is another issue raised in the pleadings. The defendant claims that she being an agent was entitled to commissions in respect of share dealings made by the plaintiffs through her and she alleges that the total amount of her commissions was $21,541.35 of which the plaintiffs had paid her $10,319.72 only, leaving a balance of $11,221.63, for which she counterclaims. In answer to this counterclaim the plaintiffs admit that there was a total amount of $21,541.35 of commissions due to the defendant as remisier, of which $10,319.72 has been paid, but the plaintiffs say that they have utilised this balance of $11,221.63 to set-off the debts due from the defendant as a remisier arising out of sales of shares to her clients, and also to set-off amounts due from her on account of bank interest on overdue bills and for cost of stock exchange diaries.

The plaintiffs did not produce any document of appointment of the defendant as a remisier, nor did the defendant produce any document for her appointment as agent. It seems that there were no such documents made. It is surprising that the parties had not executed any written agreement between them to spell out clearly their relationship, although the dealings in which they were together concerned involved a lot of money. From the evidence produced showing the conduct of the parties I find that the defendant was acting as remisier in the transactions in which shares were sold by the plaintiffs through her. I find that as a remisier she was liable to pay to the plaintiffs the cost of the shares bought by the people through her. I find that when placing orders for these shares she was not acting as agent for the plaintiffs but that she did so as a remisier. A strong pointer to this conclusion is the fact that she had allowed the plaintiffs to accumulate retention money out of commissions due to her. The letter at page 5 of Exhibit A from the plaintiffs to the defendant shows that as early as October 1969 the plaintiffs had deducted from her commissions retention money to meet costs of shares to be sold through her. Again the letter at page 10 of Exhibit A shows similar deduction. Evidence shows that she did not protest to the plaintiffs against such deduction and retention. If the cost of the shares bought by her clients were payable by them direct to the plaintiffs and were not payable by her, there would be no necessity for deduction of retention money from her commissions and she would have objected to such deduction. Parts of her commissions were in fact used by the plaintiffs to pay for the cost of shares bought by her clients, and this was done with her knowledge and without any protest by her. This fact is borne out by the letter at page 10 of Exhibit A from the plaintiffs to her. On cross-examination the defendant said that she did raise objection to the deduction of retention money and that she did so not by letter but through the telephone to Mr. Lim Eng Keat (PW1). I find it difficult to believe this. One would expect that such objection would not have been made lightly by phone. Even if objection was made by phone in the first instance, one would expect that such objection would have been followed by letters of protest in view of the fact that the plaintiffs consistently and regularly made the deductions over the period, involving considerable amounts of money.

The plaintiffs regularly sent letters to the defendant demanding payments for shares sold to her clients holding her responsible for the payments, vide letters at pages 3, 4, 6 and 9 of Exhibit A. The plaintiffs had also required the defendant to pay for shares ordered by her for her clients which were sent by the plaintiffs but not taken up by them, vide letters at pages 11 and 18 of Exhibit A. There is no evidence showing that the defendant ever raised any objection to deny that she was liable to pay for these shares. In fact there is evidence to show that she paid the plaintiffs for the shares which she had ordered for her clients, and she undertook to pay for such other shares, vide letter at page 13 of Exhibit A.

Though a remisier the defendant was not registered as such with the Stock Exchange, and this was in contravention of the bye-laws of the Stock Exchange which required that a remisier must be registered. Contracts entered into by an unregistered remisier were not illegal or void for the reason only of the fact that the remisier was unregistered. The rules and bye-laws of the Stock Exchange were binding on the members of the Stock Exchange. A member of the Stock Exchange who contravened the rules or bye-laws would be liable to penalties provided in the rules or bye-laws, but the rules and bye-laws did not have the force of law to render illegal or void a contract between a member and a remisier or between a remisier and buyers of shares, for failure to comply with the rules or bye-laws.

Some of the shares the subject matter of the plaintiffs' claim were sold by the plaintiffs in the name of Angeline Chong (the defendant's sister) as buyer. The defendant claims that these shares were bought by Mr. Lim Eng Keat using the name of Angeline Chong. On cross-examination the defendant admitted that she received commissions in respect of the shares ordered in the name of Angeline Chong. Therefore she must have dealt with these shares as remisier, and she is liable to pay the plaintiffs in respect of these shares, even if it was true that Mr. Lim Eng Keat had bought them.

I find that the plaintiffs had rightly appropriated the balance of the defendant's commissions, amounting to $11,221.63, to meet the debts which, I am satisfied, were due to them from the defendant.

Although in the Statement of Claim the plaintiffs have claimed for a sum of $38,015.66, now they pray for judgment in the sum of $35,330.25. This is because there was a sum of $2,685.45 being balance of the

commissions due to the defendant which the plaintiffs have now appropriated to meet part of the amount claimed vide letter on page 25 of Exhibit A. I therefore give judgment for the plaintiffs in the sum of $35,330.25, with interest thereon at the rate of six per cent from the date of judgment to the date of realisation, and costs. The defendant's counterclaim is dismissed with costs.

[*The defendant appealed against the above judgment. The Federal Court upheld the learned trial judge's decision. The following judgment was delivered by the learned Chief Justice of Malaya:*]

Gill C.J. (Malaya): This is an appeal from the judgment of Wan Hamzah J. whereby the appellant as defendant in the action was ordered to pay the respondents as plaintiffs a sum of $35,330.25 being the amount due under a series of share dealings between the plaintiffs and the defendant during the period November 1969 to May 1970.

The plaintiffs are stock and share brokers carrying on business in Ipoh. They are members of the Stock Exchange of Malaysia and Singapore, which is governed by its bye-laws passed by a resolution of its members on 21st June 1964. The bye-laws provide for a member firm to appoint a remisier whose name is required to be registered with the Stock Exchange. Any member found guilty of any violation of the bye-laws and rules of the Stock Exchange is liable to a fine or suspension of membership. It is common ground that the defendant was not registered with the Stock Exchange as plaintiffs' remisier.

The plaintiffs' case briefly was that they had sold shares through the defendant in her capacity as their remisier so that she was responsible for the payment of the cost of the shares transacted. The defendant, on the other hand, maintained that she sold the shares as agent for the plaintiffs and therefore was not personally liable to pay except in respect of certain transactions by which she bought shares for herself to the value of $8,175. It was also submitted on behalf of the defendant that as she was not a registered remisier the contract between the plaintiffs and herself was illegal so that any claim founded on such contract was unenforceable.

No documentary evidence was produced either by the plaintiffs or the defendant to show whether the defendant was appointed as a remisier or an agent, but from the other evidence produced at the trial of the action as to the conduct of the parties, the learned judge found that when placing orders for shares for other people the defendant was not acting as the plaintiffs' agent but as their remisier and as such was liable to pay the plaintiffs the cost of those shares.

As regards the point taken on behalf of the defendant that the contract sued on was illegal, the learned judge decided in favour of the plaintiffs for the reasons which are stated in his judgment as follows:

"Though a remisier the defendant was not registered as such with the Stock Exhange, and this was in contravention of the Bye-Laws of the Stock Exchange which required that a remisier must be registered. Contracts entered into by an unregistered remisier were not illegal or void for the reason only of the fact that the remisier was unregistered. The rules and bye-laws of the Stock Exchange were binding on the members of the Stock Exchange. A member of the Stock Exchange who contravened the rules or bye-laws would be liable to penalties provided in the rules or bye-laws, but the rules and bye-laws did not have the force of law to render illegal or void a contract between a member and a remisier or between a remisier and buyers of shares, for failure to comply with the rules or bye-laws."

The appeal before us was brought on six separate grounds but the first five grounds were abandoned so that it proceeded only on ground six. This ground is to the effect that the learned trial judge should have held that the contract between the plaintiffs and the defendant was illegal, void and unenforceable, and/or alternatively that the court would not assist a plaintiff in enforcing a contract which contravened the rules of the Stock Exchange.

It was contended for the appellant that when the plaintiffs entered into an agreement with the defendant to engage her as a remisier, without her being registered with the Stock Exchange, they were entering into an agreement which was void as being contrary to public policy. It was submitted that the bye-laws of the Stock Exchange are not like the rules of an ordinary association because the Stock Exchange deals with the public, so that any dealing in shares in contravention of the bye-laws and rules of the Stock Exchange would be contrary to public policy. It was further submitted that where it appears from the evidence during the hearing of a case that the contract sued on is contrary to public policy it is the duty of the judge to take the objection that contract is illegal and void. The cases of *Scott* v. *Brown, Doering, McNab & Co.*[1] and *Montfiore* v. *Menday Motor Components Co. Ltd.*[2] were cited in support of this submission.

On the question of what is contrary to public policy, counsel for the appellant cited to us a number of English cases. I do not consider it necessary to deal with them, because in my judgment they do not help the appellant as would appear from the following passage from the judgment of Asquith L.J. in *Monkland* v. *Jack Barclay Limited*[3]

"Certain specific classes of contracts have been ruled by authority to be contrary to the policy of the law, which is, of course, not the same thing as the policy of the government, whatever its complexion — for example, marriage brokerage contracts, contracts for the sale of honours, contracts in unreasonable restraint of trade and so on. The courts have again and again said that, where a contract does not fit into one or other of these pigeon holes, but lies outside this charmed circle, the courts should use extreme reserve in holding such a contract to be void as against public policy, and should only do so when the contract is incontestably and on any view inimical to the public interest: see, for example, the language of the House of Lords in *Fender* v. *St. John-Mildmay*[4]."

The more recent cases of *Nagle* v. *Feilden*[5] and *Esso Petroleum Co. Ltd.* v. *Harper's Garage (Stourport) Ltd.*[6] do not carry the matter any further, even though Danckwerts L.J. said in the former case that the law relating to public policy cannot remain immutable and must change with the passage of time.

Cheshire and Fifoot's Law of Contract (8th Edition) states at page 322 that the following two observations must be added upon the doctrine of public policy in the current law:

"First, although the rules already established by precedent must be moulded to fit the new conditions of a changing world, it is no longer legitimate for the courts to invent a new head of public policy. A judge is not free to speculate

upon what, in his opinion, is for the good of the community. He must be content to apply, either directly or by way of analogy, the principles laid down in previous decisions. He must expound, not expand, this particular branch of law.

Secondly, even though the contract is one which *prima facie* falls under one of the recognized heads of public policy, it will not be held illegal unless its harmful qualities are indisputable. The doctrine, as Lord Atkin remarked in a leading case(4), 'should only be invoked in clear cases in which the harm to the public is substantially incontestable, and does not depend upon the idiosyncratic inferences of a few judicial minds.... In popular language... the contract should be given the benefit of the doubt."

Counsel for the appellant also referred us to section 24 of the Contracts Act 1950 which provides as follows:

"The consideration or object of an agreement is lawful, unless —

(a) it is forbidden by a law;
(b) it is of such a nature that, if permitted, it would defeat any law;
(c) it is fraudulent;
(d) it involves or implies injury to the person or property of another; or
(e) the court regards it as immoral, or opposed to public policy.

In each of the above cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."

It is to be observed that section 24 deals with such consideration and objects of a contract as are unlawful and therefore illegal. This section is *in pari materia* with section 23 of the Indian Contract Act. Pollock and Mulla on the Indian Contract Act (8th Edition) in its commentary on section 23 under the heading "Opposed to Public Policy" says this:

"The general head of public policy covers, in English law, a wide range of topics. Agreements may offend against public policy by tending to the prejudice of the State in time of war (trading with enemies, etc.), by tending to the perversion or abuse of municipal justice (stifling prosecutions, champerty and maintenance) or, in private life, by attempting to impose inconvenient and unreasonable restrictions on the free choice of individuals in marriage, or their liberty to exercise any lawful trade or calling.... It is now understood that the doctrine of public policy will not be extended beyond the classes of cases already covered by it. No court can invent a new head of public policy."

The arguments put forward by counsel for the respondent in contesting the appeal may be summarised as follows. The defendant did not plead that the contract was void as being opposed to public policy. For the court to take cognizance of illegality the transaction must be illegal on the face of it. Not being registered as a remisier is not contrary to public policy because the bye-laws of the Stock Exchange are the bye-laws of a private body which have no force of law. They are binding on the plaintiffs but not on the defendant. If the plaintiffs were dealing with an unregistered remisier they were committing a breach of bye-law 97 of the Stock Exchange Rules which provides for a penalty. But their dealing with such a remisier did not make the contract illegal as being opposed to public policy.

I do not think there is any merit in the argument that illegality was not pleaded because a court is bound to take cognizance of it if it is of the opinion that the contract is void on the ground of being contrary to public policy. But I entirely agree with the rest of the arguments put forward by counsel for the respondent. It seems clear that the present contract does not fit into any of the traditional pigeon holes. It was on the basis of those arguments that the learned trial judge found that the contract between the plaintiffs and the defendant was not illegal. In my judgment the learned judge was quite right in taking that view.

I would dismiss this appeal with costs.

Ali and **Ong Hock Sim F.JJ.** concurred.

Appeal dismissed.

Solicitors: *Lim Ewe Hock; Maxwell, Kenion, Cowdy & Jones.*

PUBLIC PROSECUTOR v. LOO CHOON FATT

[R.Cr.J. (Hashim Yeop A. Sani J.) January 29, 1976]
[Ipoh — Perak Criminal Revision No. 6 of 1976]

Criminal Law and Procedure — Sentence — Offence of possession of dangerous drugs — Factors to be taken into consideration in assessing sentence — Public interest — Whether provision for binding over under s. 294 Criminal Procedure Code applicable — Criminal Procedure Code (F.M.S. Cap. 6), ss. 173A and 294.

Dangerous Drugs — Possession — Sentence.

In this case the respondent had pleaded guilty to a charge of possession of dangerous drugs. In mitigation he stated that this was his first offence and that he was threatened that if did not sell the drugs he would be assaulted. He was bound over under section 294 of the Criminal Procedure Code. The case came before the High Court in revision.

Held: (1) the discretion to order a bond under section 294 of the Criminal Procedure Code cannot be applied to an offence under section 12(2) of the Dangerous Drugs Ordinance, 1952 because there is an alternative punishment of either a fine or imprisonment provided in that section;

(2) in the circumstances of this case a sentence of six months' imprisonment would be appropriate.

[Editorial Note: See decision of Abdoolcader J. at p. 267 post.]

Cases referred to:-

(1) *Heng Kim Khoon* v. *Public Prosecutor* [1972] 1 M.L.J. 30.
(2) *Rex* v. *Kenneth John Ball* 35 Cr.App.R. 164.
(3) *Rex* v. *Grondkowski* [1946] 1 All E.R. 560, 561.
(4) *Public Prosecutor* v. *Idris* [1955] M.L.J. 234, 235.
(5) *Re Eng Chong Lam* [1964] M.L.J. 10.
(6) *Public Prosecutor* v. *Tan Eng Hock* [1970] 2 M.L.J. 15.
(7) *Re Badri bin Abas* [1971] 1 M.L.J. 202, 203.

CRIMINAL REVISION.

Wan Abdul Majid bin Wan Hamid (Deputy Public Prosecutor) for the applicant.

Paramjit Singh for the respondent.

Hashim Yeop A. Sani J. (delivering oral judgment): The facts of the case are that on May 20, 1975 at about 11.20 a.m. a Police constable, P.C. 58206, arrested the accused in Kampong Jawa, Ipoh, and from his person were recovered 13 plastic tubes containing 3 grammes of what was suspected to be heroin. The accused was released on bail the following day. The chemist's report tendered in the Sessions Court, Ipoh, on November 25, 1975 showed only 1.2 grammes of heroin contained in 13 plastic tubes. The Special President amended the original charge as to the amount of heroin although this is not reflected in the certified